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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92043152
Party	Defendant SANTANA'S GRILL, INC.
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Submission	Testimony For Defendant
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Signature	/Michael Sandstrum/
Date	08/27/2008
Attachments	Benito Santana Lee Testimony Deposition.pdf ( 38 pages )(1276550 bytes )

ORIGINAL

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Arturo Santana-Lee

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Arturo Castaneda

30

Aberlado Santana

31

Claudia Vallarta

32

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## I N D E X

WITNESS

BENITO SANTANA-LEE

EXAMINATION BY

PAGE

Mr. Sandstrum

4

Ms. Armenta

19

## EXHIBITS PREVIOUSLY MARKED

Petitioner's Exhibit No.	Page Referenced
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5	19
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6	21
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7	23
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## E X H I B I T S

EXHIBIT NO.

DESCRIPTION

PAGE

(All exhibits are photocopies  
unless otherwise indicated.)

28	Santana's Mexican Food, Es Muy Bueno logo (1 page)	11
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\* \* \*

1 SAN DIEGO, CA; FRIDAY, APRIL 4, 2008; 9:03 A.M.

2

3 VIVIAN SALAZAR

4 was duly sworn to interpret the questions propounded by  
5 counsel from English into Spanish and the answers  
6 as given by the witness from Spanish into English.

7

8 BENITO SANTANA-LEE,

9 having been administered an oath, was examined and  
10 testified as follows:

11

12 EXAMINATION

13 BY MR. SANDSTRUM:

14 Q. Good morning. Can you please state and spell  
15 your name for the record.

16 A. B-e-n-i-t-o S-a-n-t-a-n-a L-e-e.

17 Q. And can you tell me what your relationship is  
18 with Arturo Santana Gallego?

19 A. He's my father.

20 Q. Can you list -- do you have any brothers?

21 A. Four.

22 Q. And who are they?

23 A. Ana Lillian Santana-Lee, Arturo Santana-Lee,  
24 Pedro Santana-Lee, and Aberlado Santana-Lee.

25 Q. Are any of your brothers in this room today?

1 A. Arturo Santana-Lee and Abelardo Santana-Lee.

2 Q. And is your father in the room today?

3 A. Yes.

4 Q. And how old are you?

5 A. 45.

6 Q. And where do you currently reside?

7 A. Tecate, Baja, California.

8 Q. And did your father ever own any Mexican  
9 restaurants in the early 1990s?

10 A. Yes.

11 Q. And which ones?

12 A. Rosecrans, 1480 Rosecrans, and Yucca Valley.

13 Q. Do you know the address of the Yucca Valley  
14 restaurant?

15 A. I don't remember the number. But I know that  
16 it's on the main road in Yucca Valley. I think it's  
17 3300.

18 Q. Do you have a recollection or know how far the  
19 Yucca Valley restaurant is from the Rosecrans  
20 restaurant?

21 A. In miles or in time?

22 Q. In time.

23 A. Five hours, average.

24 Q. Did you ever work for your father at the  
25 Rosecrans restaurant?

1 A. Yes.

2 Q. When was the first time you started working  
3 for your father at the Rosecrans restaurant?

4 A. When he opened it up.

5 Q. And do you have a recollection of what date  
6 that was?

7 A. It must have been in '88. Towards the end of  
8 the '80s, beginning of the '90s.

9 Q. And that was the Rosecrans restaurant?

10 A. Yes.

11 Q. What were your job responsibilities?

12 A. Remodeling them so that they would work.

13 Q. And did you ever work at the Yucca Valley  
14 restaurant during that same time period?

15 A. Yes. At the end of the '80s, beginning of the  
16 '90s.

17 Q. And what were your job responsibilities at the  
18 Yucca Valley restaurant?

19 A. To make them ready so they can begin to work,  
20 and to put up signs, paint them, to make menus.

21 Q. What was the Rosecrans restaurant named when  
22 your father first opened it?

23 A. Alberto's.

24 Q. And was the Rosecrans restaurant opened before  
25 the Yucca Valley restaurant?

1 A. Yes.

2 Q. And what was the Yucca Valley restaurant  
3 called or named when it opened?

4 A. The same.

5 Q. Same? Alberto's?

6 A. When it first opened, they both had the same  
7 names.

8 Q. Okay.

9 A. Always.

10 Q. And then who came up with the name Alberto's?

11 A. The people who invited my father to open up  
12 this business were called Alberto.

13 Q. And did your father ever change the name of  
14 the Rosecrans restaurant from Alberto's to something  
15 different?

16 A. Yes.

17 Q. And what was that?

18 A. Corona's.

19 Q. And did he change the Yucca Valley to Corona's  
20 as well?

21 A. Yes.

22 Q. Whose idea was that?

23 A. Mine.

24 Q. Why did you have that idea?

25 A. To take advantage of the publicity of Corona.



1 Q. Did you ever have to take down or change the  
2 Corona name at the Rosecrans restaurant?

3 THE INTERPRETER: I'm sorry. Can you repeat  
4 the question?

5 BY MR. SANDSTRUM:

6 Q. Did you ever have to change the name of the  
7 Rosecrans restaurant from Corona's to something  
8 different?

9 A. Yes.

10 Q. And what was that name?

11 A. Santana's.

12 Q. And did you ever have to change the name of  
13 the Yucca Valley restaurant from Corona's to something  
14 different?

15 A. Yes.

16 Q. And what was that?

17 A. Santana's.

18 Q. And why did your father make a name change?

19 A. Because Corona's sued us.

20 Q. Who came up with the idea to name the  
21 Rosecrans restaurant Santana's?

22 A. Mine.

23 Q. Was it called Santana's or something else?

24 A. I didn't understand the question.

25 Q. Was it called Santana's or Santana's Mexican

1 Food?

2 A. Santana's Mexican Food.

3 Q. And who came up with that idea?

4 A. Mine.

5 Q. And why? How did you come up with that name?

6 A. Because of the musician.

7 Q. What musician?

8 A. Carlos Santana.

9 Q. And, obviously, your father agreed to use the  
10 name Santana's Mexican Food, correct?

11 A. Yes.

12 Q. Now, do you know, did the Yucca Valley  
13 restaurant change its name to Santana's Mexican Food as  
14 well?

15 A. Yes.

16 Q. Do you know which restaurant used the name  
17 Santana's Mexican Food first, the Rosecrans restaurant  
18 or the Yucca Valley restaurant?

19 A. First Rosecrans. But it was almost  
20 simultaneously.

21 Q. So how long after the Rosecrans restaurant  
22 started using the name Santana's Mexican Food did the  
23 Yucca Valley restaurant use the name Santana's Mexican  
24 Food, if you know?

25 A. Might have taken a month, two months. I don't

1 remember very well.

2 Q. Back in the early 1990s, how much time did you  
3 spend at the Yucca Valley restaurant working for your  
4 father?

5 A. Who?

6 Q. You.

7 A. Just while we prepared to open it. I only did  
8 the construction parts.

9 Q. Okay. And so that was your entire  
10 responsibility, basically?

11 A. Yes.

12 Q. How about with respect to Rosecrans back in  
13 the early '90s?

14 A. Just construction.

15 Q. Now, when you were working doing construction  
16 at the Rosecrans -- excuse me -- at the Yucca Valley  
17 restaurant and at the Rosecrans restaurant, were you in  
18 charge of making signs?

19 A. Yes.

20 Q. When the name changed from Corona's to  
21 Santana's Mexican Food at both the Rosecrans restaurant  
22 and the Yucca Valley restaurant, did you make a new sign  
23 for that name?

24 A. Could you repeat the question, please?

25 MR. SANDSTRUM: Can you repeat the question?

1 (The record was read as follows:

2 "Question: When the name changed from  
3 Corona's to Santana's Mexican Food at  
4 both the Rosecrans restaurant and the  
5 Yucca Valley restaurant, did you make a  
6 new sign for that name?")

7 THE WITNESS: Yes.

8 (Discussion held off the record.)

9 MR. SANDSTRUM: I'm going to mark as  
10 Respondent's Exhibit 28 a one-page document that says  
11 "Santana's Mexican Food, Es Muy Bueno."

12 (Exhibit 28 marked for identification.)

13 BY MR. SANDSTRUM:

14 Q. Did you create the logo that you see in  
15 Respondent's Exhibit 28?

16 A. Could you ask me again, please?

17 Q. Did you create the design that you see on  
18 Respondent's Exhibit 28 in front of you?

19 A. No.

20 Q. Did you design the triangular pattern that you  
21 see on Respondent's Exhibit 28?

22 A. No. Just Santana's Mexican Food.

23 Q. Besides working for your father at the Yucca  
24 Valley restaurant and at the Rosecrans restaurant during  
25 construction, did you have any business interests in

1       Tecate, Mexico?

2           A.    Yes.

3           Q.    And what were those business interests?

4           A.    Construction.

5           Q.    And what kind of construction were you doing?

6           A.    Designing, construction on houses, apartments,  
7       whatever work that I could get.

8           Q.    Did you ever get into the business of  
9       constructing an apartment complex in Tecate, Mexico?

10          A.    Yes.

11          Q.    How many units was that complex?

12          A.    Six.

13          Q.    And were your brothers Pedro Santana-Lee and  
14       Abelardo Santana-Lee equal partners in that project?

15          A.    Yes.

16          Q.    Did your brother Abelardo Santana ever  
17       transfer his interest in that apartment complex to  
18       anyone?

19               MS. ARMENTA:  Objection.  Lacks foundation.

20               THE WITNESS:  Yes.

21       BY MR. SANDSTRUM:

22           Q.    Do you know whether your brother Abelardo  
23       Santana ever transferred his interest in that apartment  
24       complex in Tecate, Mexico, to anyone?

25          A.    Yes.

1 Q. And who did he transfer his interest to?

2 A. To my father.

3 Q. And how do you know that?

4 A. Because I was the construction -- because I  
5 built it.

6 Q. And do you recall approximately -- I think I  
7 know it's been a long time -- when that transfer  
8 occurred?

9 A. Not exactly. But it was when we were  
10 constructing or building. It was a company that made  
11 gravel.

12 Q. Do you have an estimate whether that transfer  
13 took place in 1990? '91?

14 A. At the beginning of the '90s.

15 Q. Now, you just mentioned something about a  
16 gravel construction plant?

17 A. Yes.

18 Q. Was that your business?

19 A. No.

20 Q. Whose business was that?

21 A. Arturo's.

22 Q. Was your father involved in that gravel plant?

23 A. Yes.

24 Q. And do you know when that business started,  
25 approximately?

1 A. 1990.

2 Q. And did you ever work at that plant?

3 A. Yes.

4 Q. And what were your job responsibilities?

5 A. Sales.

6 Q. And how long did you work at that plant doing  
7 sales?

8 A. Five years.

9 Q. Was the gravel plant struggling in any way  
10 financially?

11 A. Yes.

12 Q. And did your father ever have to borrow any  
13 money to help support the operations of the gravel  
14 plant?

15 MS. ARMENTA: Objection. Leading. Calls for  
16 speculation.

17 THE WITNESS: Yes.

18 BY MR. SANDSTRUM:

19 Q. Do you know who he borrowed money from?

20 MS. ARMENTA: Objection. Lacks foundation.

21 THE WITNESS: Do I know who he borrowed from?

22 BY MR. SANDSTRUM:

23 Q. Yes.

24 A. From whomever he could.

25 Q. Did he ever borrow any money from your brother

1 Abelardo Santana?

2 A. Yes.

3 MS. ARMENTA: Objection. Lacks foundation.

4 THE INTERPRETER: The Interpreter would  
5 request that the deponent be instructed to please wait  
6 until the interpretation of the question is finished  
7 before answering, please.

8 BY MR. SANDSTRUM:

9 Q. Will you please wait until the interpreter  
10 finishes the interpretation before you answer the  
11 question because it's important that we have a clear  
12 record that the court reporter is taking down.

13 Do you understand?

14 A. Yes.

15 Q. Okay. How do you know that your father  
16 borrowed money to help the gravel plant keep running?

17 A. Because it was never enough to keep -- to  
18 maintain it open.

19 Q. I don't understand that. Can you clarify that  
20 response?

21 A. Okay. How can I explain this to you? Of all  
22 of the businesses that he had, he would take the  
23 resources to be able to maintain that business.

24 Q. Okay. And that included obtaining loans or  
25 borrowing money from people, correct?



1 MS. ARMENTA: Objection. Leading.

2 THE WITNESS: Yes.

3 BY MR. SANDSTRUM:

4 Q. And how do you know that Abelardo Santana-Lee,  
5 your brother, lent your father money to help run or keep  
6 the gravel plant running properly?

7 A. I would find out because it was within family.

8 Q. Do you have any idea how much your brother  
9 Abelardo Santana-Lee loaned your father for the gravel  
10 plant?

11 MS. ARMENTA: Objection. Lacks foundation and  
12 calls for hearsay.

13 THE WITNESS: No.

14 BY MR. SANDSTRUM:

15 Q. You can answer the question.

16 THE INTERPRETER: He answered "no."

17 BY MR. SANDSTRUM:

18 Q. Was it a small amount or large amount?

19 MS. ARMENTA: Objection. Leading. Calls for  
20 hearsay. Lacks foundation.

21 MR. SANDSTRUM: He's not my client, the  
22 witness. I subpoenaed him to come here today.

23 MS. ARMENTA: Unless he's hostile, you can't  
24 ask him leading questions. I'll just put my objections  
25 on the record.

1 BY MR. SANDSTRUM:

2 Q. You can answer the question if you remember  
3 it.

4 A. No.

5 MR. SANDSTRUM: Can you read the question  
6 back?

7 (The record was read as follows:

8 "Question: Was it a small amount or  
9 large amount?")

10 MR. SANDSTRUM: If you know.

11 MS. ARMENTA: Same objections.

12 THE WITNESS: No, I don't know the amount.

13 BY MR. SANDSTRUM:

14 Q. Did the gravel plant that your brother Arturo  
15 Santana-Lee and your father were involved in, did it  
16 ever go out of business?

17 MS. ARMENTA: Objection. Leading. Calls for  
18 hearsay. Lacks foundation.

19 THE WITNESS: Yes.

20 BY MR. SANDSTRUM:

21 Q. Did your father have any money invested in the  
22 gravel plant?

23 A. Yes.

24 MS. ARMENTA: Objection. Calls for  
25 speculation. Lacks foundation. Calls for hearsay.

1 BY MR. SANDSTRUM:

2 Q. How do you know your father invested money  
3 into that gravel plant?

4 A. I used to work there.

5 MS. ARMENTA: Same objections and leading.

6 Let's stop for a minute. How can I get my  
7 objections in? I need you guys to pause.

8 MR. SANDSTRUM: Did we get an answer?

9 (The record was read.)

10 BY MR. SANDSTRUM:

11 Q. At any time after the early '90s did you ever  
12 work for your father at any of the restaurants, the  
13 Rosecrans restaurant or the Yucca Valley restaurant?

14 A. After the '90s?

15 Q. Yeah.

16 A. Yes.

17 Q. And when was that?

18 A. When they were getting fixed up.

19 Q. Can you recall the date?

20 A. Not exactly, no.

21 MR. SANDSTRUM: I pass.

22 MS. ARMENTA: You're done?

23 MR. SANDSTRUM: Yes.

24 ///

25 ///

EXAMINATION

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BY MS. ARMENTA:

Q. Hi. My name is Cris Armenta, and I represent  
your father in this proceeding.

What's your occupation?

A. Construction worker.

Q. Are you an architect also?

A. Yes.

Q. Now, you said before that you helped your  
father get restaurants ready, put up signs, make menus,  
and paint the restaurant.

Was that the entirety of your responsibilities  
with respect to the restaurants that your father owned  
in the late 1980s, early 1990s?

A. Yes.

Q. Let me show you Petitioner's Exhibit No. 5,  
and I'm drawing your attention to the photograph at the  
bottom of that page.

Do you recognize what's in that photograph?

A. Yes.

Q. What's in it?

A. My uncles and my brother.

Q. What are the names of your uncles?

A. Cervando and Blanca.

Q. And what restaurant is he standing in front of

1 in the picture?

2 A. Yucca Valley.

3 Q. Can you tell by looking at that photo and the  
4 ages of the people represented in that photo  
5 approximately what year that photograph was taken?

6 MR. SANDSTRUM: Object. Calls for  
7 speculation.

8 THE WITNESS: No.

9 BY MS. ARMENTA:

10 Q. Now, do you see the colors that are painted on  
11 the restaurant along the top of the roof?

12 A. Yes.

13 Q. Who selected those colors for the Yucca Valley  
14 restaurant?

15 A. I did.

16 Q. And can you tell me what colors you see there?

17 MR. SANDSTRUM: I am going to object that the  
18 photograph speaks for itself.

19 THE WITNESS: Royal blue, forest green, and  
20 orange.

21 BY MS. ARMENTA:

22 Q. When did you first select those colors for the  
23 Yucca Valley restaurant?

24 A. I did not like the yellows and the reds of  
25 Alberto's.

1 Q. So when did those colors first appear on the  
2 restaurant in relation to the name change?

3 A. When it stopped being Alberto's and it was  
4 called Corona's.

5 Q. So when the name of the Yucca Valley  
6 restaurant changed to Corona's, was that the first time  
7 that those colors depicted in Petitioner's Exhibit 5  
8 appeared on that restaurant?

9 A. I don't remember exactly in what moment I  
10 decided.

11 Q. Was it before or after the name change from  
12 Corona's to Santana's?

13 A. I don't remember.

14 Q. In the top photograph on Petitioner's  
15 Exhibit 5, do you recognize that sign?

16 A. Yes.

17 Q. Did you make it?

18 A. Yes.

19 Q. Approximately what year did you make that  
20 sign, if you know?

21 A. Beginning of the '90s. '89, '90, somewhere in  
22 there. End of the '80s, beginning of the '90s.

23 Q. Do you recognize what's depicted in  
24 Petitioner's Exhibit 6?

25 A. Yes.

1           Q.    What restaurant is depicted in that photograph  
2    behind the people standing there?

3           A.    Yucca Valley.

4           Q.    And do you recognize the sign that's depicted  
5    in that photograph?

6           A.    Yes.

7           Q.    Did you make that sign?

8           A.    Yes.

9           Q.    Can you tell me which sign came first, the one  
10   that's depicted in Exhibit 5 or the one that's depicted  
11   in Exhibit 6?

12          A.    I don't remember.

13          Q.    Did you make the sign that's in Exhibit 6 too?

14          A.    I think so.

15          Q.    Do you recognize the people that are in the  
16   photograph?

17          A.    Yes.

18          Q.    Who are they, if you can just start from left  
19   to right?

20          A.    Blanca and Cervando. The people in the middle  
21   I don't recognize. I can't distinguish the faces. The  
22   photos are too blurred.

23          Q.    Thank you.

24                   Did there come a time that you assisted your  
25   father at the Yucca Valley restaurant in coming up with

1     some sign that had triangles that you cut out of foam  
2     board?

3             A.    No.

4             Q.    Did there ever come a time that you remember  
5     that you assisted your father in hand-making a sign for  
6     Santana's Mexican Food that included triangles?

7             A.    Yes.   In El Cajon.

8             Q.    So let me show you Exhibit No. 7.

9                    Do you recognize your father in that photo?

10            A.    Yes.

11            Q.    Do you recognize the interior --

12            A.    Yes.

13            Q.    -- of the restaurant in that photo?

14            A.    Yes.

15            Q.    And do you see the triangles depicted on that  
16   photo?

17            A.    Yes.

18            Q.    Was that the first time -- strike that.

19                    Are those the triangles that you're referring  
20   to that you assisted in making?

21                   MR. SANDSTRUM:  I'm going to object.  That  
22   misstates testimony.

23                   THE WITNESS:  Yes, but I copied them from  
24   Rosecrans.

25    ///



1 BY MS. ARMENTA:

2 Q. So tell me the first time that you ever saw  
3 triangles associated with any of the Santana's  
4 restaurants.

5 A. When they changed the design that I had  
6 created.

7 Q. Who changed the design?

8 A. Claudia.

9 Q. So you don't remember participating yourself  
10 in the creation of a sign that had triangles at the  
11 Yucca Valley restaurant?

12 MR. SANDSTRUM: Objection. Misstates  
13 testimony. It's an improper question. Move to strike  
14 the question and the answer.

15 THE WITNESS: I didn't understand.

16 BY MS. ARMENTA:

17 Q. Do you remember ever assisting your father or  
18 any of your brothers for any signage that had triangles  
19 at the Yucca Valley restaurant?

20 A. No.

21 Q. Now, do you remember a time that there was a  
22 radio announcement for the Yucca Valley restaurant?

23 A. Yes. I contracted for it.

24 Q. Who did you contract it with?

25 A. A girl, a woman. I don't remember the name.

1 Q. Do you remember the name of the radio station?

2 A. No.

3 Q. What was the -- do you remember the content of  
4 the radio advertisement?

5 A. An invitation to the inauguration of the new  
6 Santana's or the taqueria in Yucca Valley.

7 Q. Do you remember that it had a song or jingle  
8 associated with the radio advertisement?

9 A. Yes.

10 Q. What was the song?

11 A. It was a Mexican song. I don't know the name  
12 exactly.

13 Q. Do you think if you heard it again it might  
14 refresh your recollection as to what it said?

15 A. Yes. The girl that I contracted with gave me  
16 a cassette.

17 Q. So if you heard it again, might you recognize  
18 it?

19 A. Yes.

20 Q. Okay. I'm going to ask your father to sing  
21 the song.

22 MR. GALLEGOS: (Singing in Spanish.)

23 THE INTERPRETER: Tequila at midnight.  
24 Tequila upon awakening. Tequila at dawn. Tequila in  
25 the middle of night. Santana's Mexican Food, Es Muy

1       Bueno.

2       BY MS. ARMENTA:

3           Q.   Does that refresh your recollection as to what  
4       the radio announcement sounded like?

5           A.   No.

6           Q.   What do you remember about it?

7           A.   "Es Muy Bueno."

8           Q.   You remember the "Es Muy Bueno"?

9           A.   Yes.

10          Q.   And you remember that the radio announcement  
11       had the words "Es Muy Bueno" in it?

12          A.   Yes, because I copied that from that to put it  
13       in the logo.

14          Q.   Where did you then put the words "Es Muy  
15       Bueno"?

16          A.   In the slogan of the sign.

17          Q.   In the sign outside?

18          A.   Wherever there was going to be a Santana's,  
19       there was going to be that logo.

20          Q.   Do you remember whether or not -- you said you  
21       had a cassette from the girl, right?

22          A.   Yes.

23          Q.   Did you also hear the ad on the radio?

24          A.   No.

25          Q.   Did you pay for the ad to be run on the radio?

1 A. Not from my pocket.

2 Q. Do you know if anyone paid for that?

3 A. The restaurant.

4 Q. And when you're talking about "the  
5 restaurant," you're talking about your father at the  
6 Yucca Valley restaurant?

7 A. Yes.

8 Q. And so in connection with your job  
9 responsibilities to put up signs and make menus in  
10 connection with the Yucca Valley restaurant, did you  
11 then use that slogan "Es Muy Bueno" wherever you could  
12 in connection with that restaurant?

13 A. Yes.

14 Q. Do you remember whether that ad ran just one  
15 time or more than once?

16 A. On the radio?

17 Q. Yes.

18 A. It was -- the contract was for just a few  
19 months. That's all.

20 Q. Can you remember approximately what year that  
21 was?

22 A. Beginning of the '90s, end of the '80s.

23 Q. But that was at a time that your father was  
24 still an owner of the Yucca Valley restaurant; is that  
25 right?

1 A. Yes.

2 Q. Do you remember who was working at the  
3 restaurant at the time that the radio announcement "Es  
4 Muy Bueno" ran?

5 A. The workers or the one that ran it?

6 Q. Either.

7 A. I remember a Victor and Arturo ran it.

8 Q. Let me have you look again at Exhibit No. 6.  
9 So in that photograph where the sign says "Santana's, Es  
10 Muy Bueno," is that the slogan you're referring to that  
11 you copied from the radio announcement?

12 A. Yes.

13 Q. And is this an example of where you took the  
14 slogan and you incorporated it?

15 A. I don't understand. Again, please.

16 Q. Is this an example of where you took the  
17 slogan and incorporated it into signs for Santana's  
18 Mexican Food?

19 A. This is not the first one. The first one had  
20 little squares.

21 Q. What little squares?

22 A. Can I turn the page?

23 Q. Of course.

24 A. (Witness indicates.)

25 Q. So when you say "little squares," you mean the

1 little grid that's on the top of the sign in Exhibit 5?

2 A. Yes.

3 Q. So did the picture in Exhibit 5, the sign,  
4 come before the picture in Exhibit 6?

5 A. The one with the squares was first. And the  
6 second one, since the wind knocked it down, then we  
7 didn't put up the squares anymore.

8 Q. So is it fair to say that the picture in  
9 Exhibit 5 came before the one in Exhibit 6?

10 A. I think I remember it that way.

11 Q. But on both signs, one says "Muy Bueno" and  
12 the other one says "Es Muy Bueno."

13 Is that right?

14 A. Yes.

15 Q. Now, in the first sign, where it says "Muy  
16 Bueno," was this an example of where you copied the  
17 slogan from the radio announcement?

18 A. In the first one I couldn't fit in "Es."

19 Q. So you used part of the slogan in the first  
20 one?

21 A. That way you can see -- I couldn't put it in  
22 on the first time because of the space.

23 Q. Did you have those same space restrictions  
24 when it came to making menus?

25 MR. SANDSTRUM: I'm going to object. Again

1 misstates testimony.

2 THE WITNESS: Things are designed within the  
3 space that you have. Then -- so when one is designing  
4 something that doesn't fit into the space, then you take  
5 elements off, words.

6 BY MS. ARMENTA:

7 Q. Did there ever come a time that you took the  
8 slogan "Es Muy Bueno" that was on the radio ad and put  
9 it on menus or other printed things but not the sign?

10 A. Yes. The menus.

11 Q. And did that also happen at the time that your  
12 father owned the Yucca Valley restaurant?

13 A. I think so.

14 Q. At the time that you made the sign with the  
15 little squares that's depicted in No. 5, did you at the  
16 same time make an identical sign for the Rosecrans  
17 location?

18 A. No. I did everything first in Rosecrans.

19 Q. I'm just asking you about the sign. Did you  
20 make --

21 A. First it was Rosecrans.

22 Q. What sign did you make at Rosecrans?

23 A. The menu ones. And I would hang the sign  
24 wherever I was able to.

25 Q. Now, you indicated before that the sign in

1 Exhibit 5 got knocked down by wind.

2 Do you remember that?

3 A. Yes.

4 Q. Did that happen at Rosecrans too?

5 A. There's no wind here in San Diego.

6 Q. Do you have any specific recollection of any  
7 specific sign that you made for the Rosecrans location  
8 that had the words "Muy Bueno" or "Es Muy Bueno"?

9 A. The one on the roof.

10 Q. What year was that?

11 A. I don't remember. Myself and a friend made  
12 it.

13 Q. Who was the friend?

14 A. A friend from Tecate, Ricardo Rivas.

15 Q. Are you still friends with him?

16 A. Yes.

17 Q. At the time that you made that sign at the  
18 Rosecrans restaurant, who owned the Rosecrans  
19 restaurant?

20 A. I don't remember.

21 MS. ARMENTA: I have no further questions.

22 MR. SANDSTRUM: Interpose an objection. Vague  
23 and ambiguous.

24 Let's take a quick five-minute break.

25 (Recess taken.)



1 MR. SANDSTRUM: Let's go on the record.

2 The original deposition will be sent to my  
3 office as soon as you can, and then I will forward it  
4 off to the witness. Actually, strike that.

5 We're waiving signing before a notary or a  
6 person who's authorized to administer an oath. And  
7 we're waiving signing requirements by this witness,  
8 reading and signing requirements for this witness.  
9 We're waiving having to put the exhibits in a sealed  
10 envelope at this point in time and send it to the  
11 Trademark Trial and Appeals Board. And we are  
12 stipulating to the fact that to the extent there are  
13 Code of Federal Regulations or Trademark Office rules  
14 that we're not complying with with respect to the  
15 transcript, that we have the right to amend and make  
16 sure they are in compliance.

17 MS. ARMENTA: Let me stipulate with the  
18 following caveat. Let me make clear that that  
19 stipulation applies to all Spanish-speaking witnesses  
20 who have used an interpreter in these proceedings; and,  
21 secondly, if Counsel identified any transcription errors  
22 or any issues in transcription that Counsel will bring  
23 that to the attention of either the witness or the  
24 witness's counsel so that we can engage an interpreter  
25 to go over that particular part of the testimony; and

1     that the witness retains the right, if it's brought to  
2     their attention, to address potential errors in  
3     transcription.

4             MR. SANDSTRUM: Okay. I'll stipulate with the  
5     caveat that the Trademark rules are clear that material  
6     changes in testimony are improper and won't be  
7     permitted.

8             MS. ARMENTA: You can't stipulate to do away  
9     with the rules.

10            MR. SANDSTRUM: Absolutely.

11            MS. ARMENTA: So stipulated.

12            (Proceedings concluded at 9:56 a.m.)

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1 STATE OF CALIFORNIA )  
 2 COUNTY OF SAN DIEGO )

3

4 CERTIFICATE OF PERSON READING

5 DEPOSITION TO WITNESS

6

7 I, \_\_\_\_\_, whose address is

8

9 \_\_\_\_\_, do hereby certify that on the

10 \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, I did

11 translate the within deposition from English into the

12 Spanish language, reading same to the witness in his

13 native tongue to the best of my ability;

14 THAT all corrections and changes requested by

15 the witness were made and initialed by the witness;

16 THAT upon completion of said reading, the

17 witness did confirm to me that he understood the

18 reading.

19

20 Dated this \_\_\_\_\_ day of \_\_\_\_\_

21 20\_\_\_\_ at \_\_\_\_\_.

22

23 (Signature waived.)

24 \_\_\_\_\_  
 SIGNATURE OF READER/INTERPRETER

25

1 I, BENITO SANTANA LEE, hereby declare under  
2 penalty of perjury that the foregoing is my deposition  
3 under oath; that these are the questions asked of me and  
4 my answers thereto; that I have read my deposition and  
5 have made corrections, additions, or changes that I deem  
6 necessary.

7 DATED this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

8  
9 (Signature waived.)

10 \_\_\_\_\_  
11 BENITO SANTANA LEE  
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1 STATE OF CALIFORNIA )  
2 COUNTY OF SAN DIEGO )  
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4 I, Vivian R. Weiss, RPR, a Certified Shorthand  
5 Reporter for the State of California, do hereby certify  
6 that the witness in the foregoing proceeding was by me  
7 duly sworn; that the proceeding was then taken before me  
8 at the time and place herein set forth; that the  
9 testimony and proceedings were reported stenographically  
10 by me and later transcribed by computer-aided  
11 transcription under my direction; that the foregoing is  
12 a true record of the testimony and proceedings taken at  
13 that time.

14 I further certify that I am a disinterested  
15 person and that I am in no way interested in the outcome  
16 of said action.

17  
18 IN WITNESS WHEREOF, I have subscribed my name  
19 this 16th day of April 2008.  
20

21   
22 Vivian R. Weiss, RPR, CSR No. 12380  
23  
24  
25

## Respondent's Exhibit 28



... Es Muy Bueno

Benito Santana Lee  
Respondent's Ex. 28  
Gallego v Santana's  
4/4/08 - 1 pg  
V.R. Weiss, CSR

Case No. 92043152